IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev. No.1977 of 2006
Date of Decision:- 13.03.2007

Kamaldip Singh Gujral ....Petitioner(s)

through
Ms.Gagandeep Kaur, Advocate

vs.

Jasbir Kaur ....Respondent(s)

through
Mr.P.K.Gupta, Advocate.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

This order shall dispose of Crl.Rev.No.1977 of 2006 and Crl.Misc.No.74527-M of 2006. The petitions have been directed against the order dated 1.8.2006 passed by the learned Additional Sessions Judge (Ad Hoc), Patiala granting maintenance at the rate of Rs.2000/- per month to Jasbir Kaur-who is respondent in the first case and is the petitioner in the second case. For the sake of brevity, the facts are being taken from Crl.Rev. No.1977 of 2006.

The respondent and the petitioner-husband got married on 23.2.1991 and a male child (Master Jasnoor Singh) was born out of the wedlock. It appears that marriage between the parties ran into rough weather which culminated into passing of a decree of divorce dated

5.6.2003 between them by the Court of learned Additional District Judge, Patiala. There is also no denial to the fact that the male child continued to be in the custody of the petitioner-husband.

The respondent-wife filed a petition under Section 125 Cr.P.C., *inter alia,* alleging that though a sum of Rs.3 lacs were spent by her parents at the time of marriage, however, the petitioner being dissatisfied with the dowry articles, continued to harass her and finally turned her out of the matrimonial home on 18.1.2002. It was further averred that since the petitioner-husband was working as a Computer Operator in the State Bank of Patiala and was earning more than Rs.18,000/- per month apart from an additional monthly income of Rs.15,000/- and since the respondent was allegedly having no source to maintain herself, she was entitled for maintenance at the rate of Rs.10,000/- per month.

While contesting the aforesaid petition, the petitioner though admitted the factum regarding marriage between the parties and the birth of the male child out of the wedlock, however, he denied that the respondent was ever harassed for bringing insufficient dowry. The petitioner further took the plea that the respondent was B.A. M.Ed. with Mathematics and is giving private tuitions and is earning more than Rs.10,000/- per month. He further claimed that his carry home salary was Rs.8995.95 only and since he has a school going son for whom he has to spend Rs.4,000/- per month on education and upkeep apart from Rs.1500/- per month to the maid servant for cooking meal etc., he was not liable to pay anything to the respondent towards maintenance.

The learned Chief Judicial Magistrate, Patiala vide his order dated 5.5.2005 on appraisal of the evidence on record held that the total

carry home salary of the petitioner was Rs.11817-10 and since a substantial part of the said salary is required to be spent by him towards education and upkeep of his minor son apart from paying salary to the maid servant and house rent, granted a maintenance of Rs.1000/- per month to the respondent-wife.

Aggrieved, the respondent-wife preferred a revision petition which has been partly allowed by the learned Additional Sessions Judge (Ad hoc), Fast Track Court, Patiala vide his impugned order dated 1.8.2006 whereby the respondent-wife has been held entitled to maintenance at the rate of Rs.2,000/- per month from the date of passing of order dated 5.5.2005 by the learned Chief Judicial Magistrate, Patiala. While enhancing the maintenance from Rs.1000/- to Rs.2000/-, the learned Additional Sessions Judge has taken notice of the fact that the respondent-wife has no source of income or any property and having regard to the total income of the petitioner-husband and the bare minimum amount which the respondent needs to sustain herself, she is entitled to maintenance of Rs.2000/- per month.

The aforesaid enhancement in the maintenance amount has prompted the petitioner-husband to impugn both the orders through this revision petition.

The connected petition i.e. Crl.Misc.No.74527-M of 2006 has been filed by the respondent-wife for further enhancement of the maintenance as according to her she ought to have been granted maintenance at the rate of Rs.10,000/- per month.

I have heard learned counsel for the parties and perused the impugned orders.

It is an admitted fact that the petitioner (husband) is working as a Computer Operator in a nationalized bank i.e.the State Bank of Patiala. The total salary drawn by him including the carry home salary also stands proved on record as Balkar Singh (CW-1)-a Clerk from State Bank of Patiala has been produced by the respondent-wife who produced on record the salary statement (Exhibit C-2) of the petitioner. It has also come on record that the petitioner-husband is residing in his own house. From the record, it does appear that the petitioner is getting a total salary of Rs.18,000/- per month and his carry home salary is also more than Rs.11,000/- per month which with the passage of time must have increased.

On the other hand, no convincing evidence has been led by the petitioner to prove that the respondent has any source of livelihood. Though a plea was taken that she is doing some tuition work, however, no cogent evidence to substantiate the said plea has been led. There is also no denial to the fact that no lump sum amount as permanent alimony has ever been paid to the respondent-wife. In these circumstances and having regard to the high rise in the price of the basic amenities, it cannot be said by any stretch of imagination that a sum of Rs.2,000/- per month granted to the respondent towards maintenance, is on the higher side. Consequently, no interference in the impugned order passed by the learned Additional Sessions Judge is called for.

Learned counsel for the respondent-wife has been heard on the question of enhancement of compensation in question as well. According to her, the amount of Rs.2,000/- per month is too meager and a reasonable amount which is sufficient enough to sustain the respondent in a respectable manner ought to have been awarded by the Courts below. In the light of the

admitted fact that out of Rs.11,000/- or so which the husband is receiving as carry home salary, he is required to spend a substantial part thereof on the education and upkeep of their only child for which the respondent-wife is equally responsible. I am of the considered view that so long as the child born out of the wedlock does not complete his education and/or becomes self-dependent, the respondent-wife shall have to sacrifice a part of the maintenance claim as the upkeep of the child is their joint responsibility. Consequently, I do not find any merit in her petition which too is also dismissed.

March 13, 2007 **(SURYA KANT)**
poonam **JUDGE**